

House Bill 1552

By: Representatives Fleming of the 117<sup>th</sup>, Everson of the 106<sup>th</sup>, and Talton of the 145<sup>th</sup>

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, so as to provide that the death penalty may be imposed where the jury finds at least one aggravating circumstance, but is unable to reach a unanimous verdict as to the sentence, taking into account the majority vote of the jurors; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, is amended by striking Code Section 17-10-31.1, relating to requirement of a jury finding aggravating circumstances and recommendation of sentence of death or life without parole, and inserting in lieu thereof the following:

"17-10-31.1.

(a) Where, upon a trial by jury, a person is convicted of murder, a sentence of death or life without parole shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance ~~and a recommendation that such sentence be imposed.~~

(b) Where a statutory aggravating circumstance is found and a recommendation of life without parole is made, the ~~court~~ judge shall sentence the defendant to imprisonment for life without parole as provided in Code Section 17-10-16.

(c) Where a statutory aggravating circumstance is found and the jury has been impaneled to determine the sentence ~~and the jury has unanimously found the existence of at least one statutory aggravating circumstance but~~ is unable to reach a unanimous verdict as to sentence, the judge shall dismiss the jury and shall impose a sentence of ~~either~~ life imprisonment, or imprisonment for life without parole, or death.

(d) In imposing sentence, if the judge finds beyond a reasonable doubt that the defendant committed at least one statutory aggravating circumstance, the judge may sentence the defendant to:

(1) Imprisonment imprisonment for life without parole, ~~only if the court finds beyond a reasonable doubt that the defendant committed at least one statutory aggravating circumstance and the trial court~~ if the judge has been informed by the jury foreman foreperson that upon their last vote, a majority of the jurors cast their vote for a sentence of death or for a sentence of life imprisonment without parole; or

(2) Death, if the judge has been informed by the jury foreperson that upon their last vote, a majority of the jurors cast their vote for a sentence of death;

provided, however, that the ~~trial~~ judge may impose a sentence of life imprisonment as provided by law.

~~(d)~~(e) Notwithstanding any other provision of law, during the sentencing phase before a jury, counsel for the state and the accused may present argument and the ~~trial~~ judge may instruct the jury:

(1) That 'life without parole' means that the defendant shall be incarcerated for the remainder of his or her natural life and shall not be eligible for parole unless such person is subsequently adjudicated to be innocent of the offense for which he or she was sentenced; and

(2) That 'life imprisonment' means that the defendant will be incarcerated for the remainder of his or her natural life but will be eligible for parole during the term of such sentence."

## SECTION 2.

This Act shall become effective on July 1, 2006, and shall apply to all trials which occur on or after July 1, 2006.

## SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.